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MAILED

AUG 29 2006

In re Application of
Christopher J. Rixon et al.
Application No. 10/712,915
Filed: November 13, 2003
Attorney Docket No. 65,748-907

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ORDER TO
SHOW CAUSE

CENTRAL REEXAMINATION UNIT

This is a show cause order based on the expiration of U.S. Patent No. 6,314,831, for which the present application requests reissue.

BACKGROUND

1. The present application ("present reissue proceeding") was filed November 13, 2003, for reissue of U.S. Patent No. 6,314,831 (the '831 patent), which issued November 13, 2001.
2. A review of the Office's financial records for the '831 patent reveals that the 3.5 year maintenance fee due and not paid could have been paid during the period from November 15, 2004 (November 13, 2004, was a Saturday) through May 13, 2005, or with a surcharge during the period from May 14, 2005 through November 14, 2005 (November 13, 2005, was a Sunday). As a result, the '831 patent expired after midnight on November 13, 2005, for failure to pay the 3.5 year maintenance fee due.¹ See 1302 *Official Gazette* 1229 (January 10, 2006).

ORDER TO SHOW CAUSE

Since the '831 patent has expired for failure to pay the first maintenance fee, the Director of the USPTO no longer has the authority under 35 U.S.C. § 251 to reissue the '143 patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993).

¹ Manual of Patent Examining Procedure § 2506 (8th ed. 2001) (Rev. 4 October 2005) states in part the following:

For example, if the grace period for paying a maintenance fee with a surcharge ended on a Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g., Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Therefore, if the maintenance fee and any applicable surcharge are not paid, the patent will expire as of the end of the grace period as listed above. A patent that expires for failure of payment will expire on the anniversary date the patent was granted in the 4th, 8th, or 12th year after the grant.

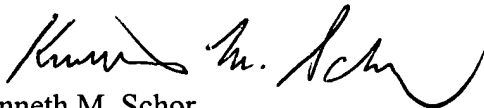
As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only "for the unexpired part of the term of the original patent." Thus, when **Morgan's original patent expired** on August 19, 1992, the **Commissioner was divested of his reissue authority** because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393; Emphasis added]

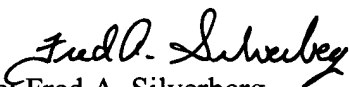
Because the Director no longer has the authority under 35 U.S.C. § 251 to reissue the patent, the Office intends to terminate the present reissue proceeding, and thereafter hold the application for reissue of the '831 patent to be an abandoned application.

CONCLUSION

1. Applicant is hereby being provided with a period of **30 DAYS** from the mailing of this ORDER to show cause why the Office should not terminate the present reissue proceeding. If applicant proposes to show cause why the present reissue proceeding should not be terminated, applicant's showing must include an explanation of why the proceeding should continue in spite of the expiration of the original patent. If applicant makes a showing, the showing will be evaluated as to whether it provides sufficient basis why the present reissue proceeding should not be terminated.
2. Failure to respond to this show cause order within the 30 day period that has been set will result in the proceedings being terminated by default. If the present reissue proceeding is terminated, jurisdiction over the application for reissue of the '831 patent will be returned to Technology Center Art Unit 3682 for processing as an abandoned application.
3. Jurisdiction over the file for reissue application 10/712,915 is being retained in the Office of Patent Legal Administration (OPLA), pending a response by applicant, or the expiration of time for a response.
4. Telephone inquiries related to this decision should be directed to Kenneth J. Dorner, Special Program Examiner, at (571) 272-6587 or, in his absence to Fred A. Silverberg, Senior Legal Advisor, at (571) 272-7719.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner for Patent Examination Policy



Conferee: Fred A. Silverberg